

Amada Enterprises, d/b/a View Heights Convalescent Hospital and Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO. Case 21-CA-19373

March 19, 1981

DECISION AND ORDER

Upon a charge filed on August 4, 1980, by Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, herein called the Union, and duly served on Amada Enterprises, d/b/a View Heights Convalescent Hospital, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint on September 3, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended.¹ Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on July 10, 1980, following a Board election in Case 21-RC-16219, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;² and that, commencing on or about July 25, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On September 10, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On December 29, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 8,

1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause.³

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and opposition to the General Counsel's Motion for Summary Judgment, Respondent neither admits nor denies the procedural allegations, the status of the Union as a labor organization, the appropriateness of the unit, that an election was conducted among certain of its employees, that a majority cast ballots in favor of representation by the Union, that subsequently the Board issued a Certification of Representative, the Union's postcertification request for bargaining, or its refusal to bargain with the Union. Therefore, under Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, which states, "any allegation in the complaint not specifically denied or explained . . . shall be deemed to be admitted to be true . . .," we find that Respondent has admitted these allegations. However, Respondent denies that the Union has been and is now the exclusive representative of the employees in the stipulated unit for the purposes of collective bargaining and asserts as its sole affirmative defense that the Board incorrectly certified the Union by improperly overruling Respondent's objections to the election.

Review of the record herein reveals that in Case 21-RC-16219 Respondent filed objections to the conduct of the election⁴ alleging, *inter alia*, that the Union's authorization cards contained a statement which violated the rule set forth in *N.L.R.B. v. Savair Manufacturing Company*, 414 U.S. 270 (1973). Respondent contended that the card's instruction to "[f]ill out and sign the authorization card You will not be charged any initiation fee" implied that only those employees signing the cards would be exempt from paying the fee. The Regional Director's investigation disclosed that the card did not state or imply that the initiation fee waiver was applicable only to card signers. The investigation also revealed that the Union's campaign leaflets clearly stated that the waiver of the mem-

¹ On September 3, 1980, the Regional Director for Region 21 issued a consolidated amended complaint and an order consolidating Cases 21-CA-19373, the instant case, and 21-CA-18554, which alleges violations of Sec. 8(a)(4), (3), and (1) of the Act. Respondent's answer specifically denied allegations relating to Case 21-CA-18554. Thereafter, on November 18, 1980, pursuant to a withdrawal request by Charging Party-Union, the Regional Director for Region 21 severed the above-numbered two cases and dismissed the charges related to Case 21-CA-18554.

² Official notice is taken of the record in the representation proceeding, Case 21-RC-16219, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV ElectroSystems, Inc.*, 166 NLRB 938 (1967), enf'd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enf'd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enf'd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

³ The response is entitled "Statement in Opposition to General Counsel's Motion for Summary Judgment."

⁴ The election was held pursuant to a Stipulation for Certification Upon Consent Election. The tally of ballots revealed that of approximately 97 eligible voters, 36 voted for, and 30 voted against, the Union; there were 5 challenged ballots, an insufficient number to affect the results.

bership initiation fee was not dependent on an employee's manifestation of support for the Union prior to the election. The Regional Director overruled the objection and Respondent excepted to his report. The Board considered Respondent's exceptions, and on July 10, 1980, affirmed the Regional Director's findings and certified the Union.

Thereafter, in reply to the Union's request for bargaining, Respondent asserted that the certification of the Union was incorrectly issued. In its defense to the instant charge Respondent reasserts this same argument.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.⁵

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a California corporation and health care institution, is engaged in the business of providing convalescent and mental care to its patients and operates a facility located at 12619 South Avalon Boulevard, Los Angeles, California. In the normal course and conduct of its business operations described above, Respondent, during the last 12-month period, derived gross revenues in excess of \$250,000 and, during the same period of time, purchased and received goods and products valued in excess of \$5,000 from outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

⁵ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

II. THE LABOR ORGANIZATION INVOLVED

Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees employed by the Respondent at its facility located at 12619 South Avalon Boulevard, Los Angeles, California, but excluding professional employees, registered nurses, office clerical employees, guards, and supervisors as defined in the Act.

2. The certification

On February 26, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 21, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 10, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about July 21, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about July 25, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since July 25, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Amada Enterprises, d/b/a View Heights Convalescent Hospital, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees employed by Respondent at its facility located at 12619 South Avalon Boulevard, Los Angeles, California, but excluding professional employees, registered nurses, office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 10, 1980, the above-named labor organization has been and now is the certified and ex-

clusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 25, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Amada Enterprises, d/b/a View Heights Convalescent Hospital, Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees employed by the Respondent at its facility located at 12619 South Avalon Boulevard, Los Angeles, California, but excluding professional employees, registered nurses, office clerical employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and

other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its South Avalon Boulevard, Los Angeles, California, facility copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees employed at the 12619 South Avalon Boulevard, Los Angeles, California facility, but excluding professional employees, registered nurses, office clerical employees, guards, and supervisors as defined in the Act.

AMADA ENTERPRISES, D/B/A VIEW
HEIGHTS CONVALESCENT HOSPITAL